IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 691 of 2004

For Approval and Signature:

HON'BLE MR. JUSTICE M.D. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

AHMED MUSA GAJI

Versus

THE STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 691 of 2004

MR YOGESH S LAKHANI for Petitioner No. 1-10

MR KP RAVAL ADDL PP for Respondent No. 1

CORAM : HON'BLE MR. JUSTICE M.D. SHAH

Date of decision: 11/05/2005

ORAL JUDGEMENT

The present petitioners have filed the present revision application under Section 397 read with Section

401 of the Code of Criminal Procedure challenging the order dated 17.9.2004 passed by the learned Additional Sessions Judge, 4th Fast Track Court, Panchmahals, whereby, the learned Additional Sessions Judge has rejected the discharge application dated 27.4.2004 at Ex.5 in Sessions Case No. 289 of 2002.

2. Brief facts of the prosecution is that on 24.5.2002 at around 23.15, there were some communal disturbance in the city of Godhra. At around 2.15 a.m. there was a message received by the police that certain scooters and shops are being burnt in the area of Makankuva, where about 500 to 700 people of Muslim community have gathered and are creating nuisance by pelting stones at the houses of the people of Hindu community. At that time, one lady received injuries on her chest, shoulders and hands with some sharp weapons and therefore, an FIR being I. CR. No. 140 of 2002 came to be filed on 25.5.2002 by the P.I. Incharge Shri B.D. Rana for the offences punishable under Sections 307, 436, 143, 144, 147 of the Indian Penal Code. As the offence under Sections 307 and 436 of the IPC are triable by the court of Sessions, the learned JMFC has committed the said case to the court of Sessions by passing committal order under Section 209 of the Code of Criminal Procedure. Thereafter, the said case is numbered as Sessions Case No. 289 of 2002 and during trial, the present petitioners submitted an application under Section 227 of the Code of Criminal Procedure at Ex. 5, contending that no names of any petitioners were mentioned in the FIR nor in statements of the witnesses which were recorded during Investigation. So far as accused No. 14 is concerned, only discovery panchnama was drawn, which was subsequently drawn after long time and there is no evidentiary value of drawing of discovery panchnama. After hearing, both the parties, learned Additional Sessions Judge has rejected the said application and against the said order, the present petitioners have preferred present revision application. The lower court has held that the co-accused has narrated the name of present petitioners in the statement recorded by the police and there is also documentary evidence of the arrest panchnama on the record. Taking into consideration this fact, lower court has rejected the said application.

3. Heard Ms. Thakkar, learned advocate for the petitioners and Mr. K.P. Raval, learned Addl.P.P. for the respondent State.

4. It is pertinent to note that accused No. 14

Siraj Ibrahim has not preferred any revision application against the said order. Perusing the police papers, it seems that accept the statement of the co-accused, there is no other evidence against the present petitioners. It is settled legal position of law that statement of co-accused is not admissible in evidence and so, it cannot be of any help to the prosecution while deciding the matter. So far as arrest panchnama is concerned, it is formal one and on the basis of this evidence also, present petitioners can not be connected with the crime. Except this arrest panchnama, there is no evidence produced by the prosecution against the present petitioners. For framing charge under Section 227 of the Code of Criminal Procedure, it is not require to look into whether accused is liable to be convicted or not but strong suspicion is sufficient to frame the charge. Taking into consideration the entire police papers and documents, there is not even a remote evidence for framing charge against the present petitioners. In the circumstances, this revision deserves to be allowed.

5. For the foregoing reasons, this revision application is allowed. The order dated 17.9.2004 passed by the learned Additional Sessions Judge, 4th Fast Track Court, Panchmahals below Ex.5 in Sessions Case No. 289 of 2002 is hereby quashed. Rule is made absolute. Direct service permitted.

(M.D. Shah, J.)
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